

Chapter Two: “That’s a damn good dog”

No body murder cases are unique. Unique legally. Unique factually. Unique in their effect on the victim’s family, friends, and loved ones. It is this uniqueness that poses a significant challenge for police and prosecutors investigating these cases. In the United States records of no body or bodiless cases go back to the 1830s, but in total there have been fewer than 300 trials involving no body cases nationwide. By comparison, according to the United States Department of Justice, in 2005 there were 16,692 murders nationwide. The national closure rate was 62 percent, meaning there were arrests or closures, which could mean the death of a suspect before an arrest or a justifiable homicide with no arrest, in 10,394 cases. If only 10 percent of these cases go to trial, probably a very low rate because evidence shows that murderers are tried at a rate closer to 50 percent, then more than 1,000 murder trials occur per year across the nation. Moreover, the number of murders in 2005 was well below many prior years so, conservatively, there could be an average of 1,500 murder trials per year. In the last twenty years alone, that would mean more than 30,000 trials. Thus, even with the advent of modern forensics, no body cases remain incredibly rare.

And for good reason. The victim’s body remains the single most important piece of evidence in any murder case. Consider the amount of useful information a body provides. First, it can reveal the cause of death. Was the victim shot, stabbed, strangled, or poisoned? A body can potentially tell you. A skilled medical examiner, and not all are skilled, can measure the spread of powder deposits left on the skin (soot and stipple) to determine the distance between the barrel of a gun and the victim’s body. Recovering either a bullet or shell casing means a ballistics expert can identify not only the caliber of the weapon used but the exact weapon used if a gun is also recovered. Poisoning can be detected through advanced toxicology tests. Was the

victim strangled? If so, contusions may appear on the neck. Minute bleeding in the eyelids, called petechial hemorrhaging, may be present. A broken hyoid bone, a small horseshoe-shaped bone attached to the tongue, can break when someone is strangled. Today forensic pathologists can determine the length of a knife as well as the width and shape of its blade by the marks left behind on severed flesh and cut bone. Of course one of the best forensic clues, body fluids such as blood and semen used to conduct DNA tests, are not available when the body is gone. Evidence of bitemarks, blunt force trauma, and even fingerprints are simply not available when a body is permanently disposed of.

Without a body, it is impossible to calculate the victim's time of death (also known as the post mortem interval or PMI). In recent decades, important scientific advances and a broader variety of forensic methods have improved the ability to determine time of death. At death, the human body begins a process of shutting down, and a cycle called rigor mortis begins. Rigor mortis, in a nutshell, occurs as the body's muscles break down and produce lactic acid—the same lactic acid that causes a marathoner's legs to stiffen at the end of a race. This buildup of acid occurs in a predictable fashion, first in the smaller muscles and gradually moves to the large muscles during the next six to twelve hours. Therefore, when a body is first discovered, a trained police officer can test the state of rigor mortis by checking to see which of the victim's muscles are stiff. Full rigor mortis can last from six to twelve hours and begins to recede over a final six to twelve hour cycle. The entire cycle is highly dependent upon the environment a body is in. A body in a closed, unair-conditioned room in Washington, D.C. in August is going to travel through the cycle and then begin decomposing much more quickly than a body outdoors in January in Fairbanks, Alaska.

While science has long known of rigor mortis and its importance as a death clock, recently modern science has added more arrows to the time-of-death quiver. Body temperature, known as algor mortis, is a more accurate predictor of time of death because the body cools in a predictable fashion. By measuring a corpse's temperature in the liver, ear, or rectum, a comparison with the living temperature of 98.6° can be made.

Similarly, discoloration of the skin occurs as a body decomposes, providing valuable clues about time of death. Livor mortis occurs as red and white blood cells separate and begin to settle in the body as gravity takes over. This settling leads to a purplish color forming where the body is lowest and begins to spread over the entire body. By viewing the advancement of livor mortis, forensic pathologists can work backwards and determine the PMI.

Other methods of pinpointing the time of death include measuring vitreous eye fluid and examining insect activity on the body. By measuring levels of certain chemicals found in the vitreous fluid in the eyeball, a backwards calculation can be made to determine with reasonable accuracy the time of death. Similarly, the level of insect activity on a body can also determine the time when a victim was killed. Beginning in the 1980s, forensic pathologists began to realize that the maggots and insects on a body could provide clues to a victim's time of death. Different insects preferred to, and there's no delicate way to say this, feast on human flesh at different intervals. Different species of blow flies, also known as blue or green bottle flies, lay eggs from which maggots hatch. By determining the species of blow fly and the stage of growth, scientists can determine how long the insect or maggot has been living on a dead body.

Given these medical advances, a medical examiner's failure either to test or observe any of these changes in a body can be fodder for attacking a prosecution's time of death estimate. At the scene of another domestic murder case I had years before the Marion Fye case, a forensic

pathologist responded to the crime scene inside the victim's house. The victim was in her bed upstairs with her throat cut so badly her head was nearly severed. It is rare in D.C. for a medical examiner to respond to a crime scene, but because the date and time of the victim's murder was critical the detective on the scene wisely summoned an ME. At the scene, the medical examiner was able to test the victim's level of rigor mortis, see the lividity of her skin, and examine evidence at the scene that helped determine her time of death. At trial, however, the doctor was attacked during cross-examination for failing to have used a thermometer to record the victim's temperature. (He testified he didn't have a thermometer.) By using the victim's body temperature and the room temperature, the time of death can be calculated to a fairly exact time by counting backwards from a normal body temperature. Luckily, the doctor had sufficient other evidence of the time of death that his failure to take a body temperature did not lead to an acquittal. But a defense attorney's attack on the government's case for failing to perform a forensic test is a common technique and even has a name amongst police and prosecutors: the CSI effect. CSI, for a long time the nation's most watched television show, has led millions of viewers to believe that forensic science is an even more powerful crime-fighting tool than it actually is. We often joked that if they ever added *CSI: Washington* to the CBS lineup, viewership would plummet because, given MPD's less than stellar reputation, each episode would end with the crime scene officers running out of powder for fingerprints or light bulbs to light their fluorescent DNA detection lamps.

Determination of the PMI is highly dependent on the environment a body is in. Not having a body often means there is no crime scene. Without a crime scene, many of the investigative techniques detectives use at a scene are worthless. Blood spatter pattern analysis, which analyzes blood patterns at a scene to determine how a murder occurred, cannot be done.

Nor can scene-specific searches for trace evidence, such as minute pieces of hair and fiber left behind with every contact between a suspect and an object. Investigators also cannot use crime scene reconstruction or tracking dogs.

In one no body case, a tracking dog led to the downfall of the defendant, Stephen Epperly. Epperly met his victim, Gina Hall, on June 28, 1980, at a Marriott hotel nightclub in Blacksburg, Virginia. Hall, 18, had just finished her freshman year at Radford College, and she decided to celebrate finishing her exams with a night of dancing. She tried to convince her older sister Diana, a senior at Radford, to go with her but to no avail. Gina decided to go by herself. Once there she met Epperly and a friend of his named Bill King. At the end of the night, Epperly and Gina left in her car and drove to King's summer house on Claytor Lake. Later that night, King and another woman arrived at the house. Although they both saw Epperly, who was shirtless and wiping his shoulders with a towel, neither of them saw Gina. While King was taking a late-night swim with his guest, King said Epperly called out to him that he and Gina were leaving. Since that evening at the Marriott, no one else saw or spoke to Gina Hall.

At 7:00 the next morning, a deputy sheriff saw Hall's empty car parked near a railroad trestle over the New River with the trunk open. Eventually Hall was reported missing, and the police began questioning Epperly. He told the police Hall had driven him to his house in Radford after they had been at the lake house. However, Epperly also made several damaging statements to friends including asking one friend, whose brother was an attorney, if his brother would represent him. When the friend replied, "Probably not," Epperly asked the man if he could at least ask his brother "if there was anything that they could do to him if they didn't find a body."

As part of their investigation, police used a tracking dog. They brought the dog to where Hall's car had been abandoned near the railroad trestle. Using underwear taken from Epperly as a scent, the dog went onto the railroad trestle and crossed above the New River. He then followed a convoluted route through the city of Radford, including following some railroad tracks, going around a box factory, and passing through a shopping mall and a car wash. The dog ended his trail at the front porch of a home in Radford: Epperly's home. The dog's tracking proved Epperly had not been driven to his house in Hall's car and showed that he probably had thrown her body into the New River from the railroad trestle and then made his way on foot back to his house. When informed of the dog's performance, Epperly repeated three times, "That's a damn good dog."

No body, however, often means no crime scene, and no crime scene means no tracking dog or crime scene reconstruction or search for trace evidence. Thus, a murderer who can successfully dispose of a body is like a sprinter who starts a 100 meter race on the 20 meter line; he gets a tremendous head start that can be almost insurmountable. Since the advantages of disposing of the best evidence of one's crime are so great, the list of ways murderers have disposed of their victims is astonishing for its creativity. Killers have thrown bodies out of airplanes into the ocean, pushed them off ships into the sea, and dumped them into canals. They have buried bodies deep in the woods, thrown them into landfills, and dumped them on the ground where they are left to rot. Defendants have burned bodies in furnaces, in the victim's own home, and on wooden pyres. They have sawed bodies apart with chain saws, ripped them apart with woodchippers, and fed bodies to pigs. One defendant tried to eliminate his victim by using sulphuric acid, while another boiled his wife in his sausage plant. Dumpsters, landfills, and large bodies of water are perennial resting places for victims. Damien Lamb, who beat a man

to death with a shovel, found perhaps the most unusual hiding place, hiding his victim's body in a beaver hut on his stepfather's property.

I knew none of this history when I first heard about the case of Marion Fye in the fall of 2004. I was going through a transition of sorts. I had been with the U.S. Attorney's Office since 1995 and had just decided to step down as chief of one of the six homicide and violent crime sections. In those days, the U.S. Attorney's Office prosecuted all homicides and violent crimes geographically by police district. For two years, I had been the chief of the Third Police District's section which covered such well-known Washington, D.C., neighborhoods as Dupont Circle, Adams Morgan, and Shaw. These neighborhoods were far from D.C.'s most violent but were popular tourist destinations and important commercial centers. When a murder happened here, it tended to be a big deal and receive an inordinate amount of press coverage.

I supervised a team of seven AUSAs who prosecuted both homicides and other violent crimes such as armed robberies, car jackings, and attempted murders. I had enjoyed being a supervisor but, coming on the heels of an 18 month stint as a deputy chief in Misdemeanors, I was getting burned out. Always cursed with a fairly short attention span, I constantly felt the need to move on to the next, bigger and better thing, whatever that might be.

In the Fall of 2004, a new U.S. Attorney for the District of Columbia, Ken Wainstein, was in place and, as part of putting his stamp on the office, Wainstein decided to end the geographic focus of the homicide/violent crime sections and return all homicide prosecutions to a single section that would handle only homicide cases. This section would be led by a chief and two deputies. Since so many D.C. murders were related to other events occurring in a neighborhood such as drug turf wars and petty neighborhood beefs, I had long been a proponent of the community-based focus on homicides. Having the same group of prosecutors deal day in

and day out with the same neighborhood and residents gave us an advantage in terms of intelligence and familiarity that made us better, more pro-active prosecutors. I strongly believed it was a mistake to move away from this model. But I also understood that any new U.S. Attorney, who is presidentially appointed and confirmed by the Senate, had a right to change whatever he or she wanted.

Wainstein was the fourth U.S. Attorney for whom I had worked and the first I knew personally. He had been a long-time member of our office before being appointed U.S. Attorney in May 2004 and was widely admired by me and my colleagues. We were happy to have one of our own as the boss. Wainstein had actually given me my first chance to be a supervisor when, as the acting U.S. Attorney in 2001, he made me deputy chief of the Misdemeanor Section. Wainstein was a veteran homicide prosecutor himself, and the move from a geographic focus back to the more traditional setup of a single homicide unit did not surprise me. But with this change I saw the writing on the wall. I was the most junior of the six homicide/violent crime chiefs and with all six of us plus our boss potentially vying for a total of three supervisory slots in the new homicide section, I knew I was unlikely to remain a homicide supervisor for long. So Wainstein's changes, combined with my desire to try more cases, led me to pack up my corner office on the ninth floor of our building and move halfway around the floor to my new, smaller digs as a line assistant.

Even under the geographic model of homicide prosecution, domestic violence murders had been handled by a central office, the Sex Offense/Domestic Violence section. There were no obvious benefits to prosecuting domestic violence murders by neighborhood. Under the new model, which was actually a return to how homicides had been prosecuted for many years before community- oriented prosecution became popular, all homicides would be handled in one

section. Again, I thought this was a mistake. Domestic homicides are more like the run of the mill domestic violence cases handled by the Sex/DV section than like your typical DC homicide. Despite my philosophical differences, however, I decided to move to a new subunit of the homicide section, the Specialized Homicide Unit. In an attempt to maintain some geographic focus, the new Homicide Section would still assign AUSAs geographically so that one group of prosecutors would handle all homicides from one police district. My seniority enabled me to move to the Specialized Homicide Unit, which would now handle domestic violence murders, baby deaths, negligent homicides (typically automobile crashes resulting in deaths) and cold cases. Given my long-time interest in forensic cases, it seemed like a good fit.

So in October of 2004 I found myself sitting in my new office surrounded by boxes and files trying to unpack and read over the files of the new cases I would be handling. One of my favorite aspects of being a prosecutor is receiving a new case file and reading it. I have long been a voracious reader, not surprisingly mostly of true crime and biographies. To me, a new case file was like a new book. It was a story that started near the end, someone's death. My job was to write the final chapter. Each file, like a book, had a plot (why had this person been killed? how had it happened?), characters (witnesses, detectives, and officers), and, like most good books, an unanswered question (who did it?). It was all laid out for the reader in neatly (I hoped) organized folders and Redwelds: police reports, crime scene photos, crime scene diagrams, autopsy report, ballistics report, statements from eyewitnesses, etc. I would sit at my desk, with a legal pad close at hand and read through the file, jotting down the basic facts of the case, questions to be answered, and what needed to be done. Inevitably I would find myself immersed in the world of the case, to the extent that I would imagine myself as a silent observer to everything that had happened. The more interesting or difficult the case, the more I would

think about it. Even away from the office I would begin to plot out how I was going to bring this story to life in front of a jury.

Transferring cases from one AUSA to another is one of the downsides of a large bureaucratic transition. Supervisors decide what cases go where and to whom, a process ripe for the possibility that a shitty case will magically leave one AUSA and travel to another. As an AUSA returning to the line, that is, to try cases and not to supervise, I was a prime candidate to receive every crappy murder case another AUSA wanted to unload. Having done case dumps like this myself, I knew I would not be spared. And in D.C., there were some real homicide dogs: cases where an arrest was made based upon the statement of one witness who was now dead, missing, or refused to cooperate; cases where we determined witnesses had lied to the police; and cases where the witnesses had such lengthy criminal records themselves that it was hard to keep straight who were the witnesses and who were the defendants. Then there was my favorite: the community service killing, where the victim was so universally despised that the community regarded his killing as a good deed. Needless to say, not too many folks stepped forward to help solve those killings.

So it was with some suspicion that I received the call from my colleague and friend Anthony Scarpelli, who said he wanted to talk about a case he wanted to transfer to me. Scarpelli was in the Sex Offense/Domestic Violence Section and had to transfer all of his murder cases to the new Specialized Homicide Section.

“I was wondering if I could come and talk to you about this case I’ve been investigating. I’ve been so busy I haven’t had time to do much work on it but it’s a pretty interesting case. There hasn’t been an arrest so it’s still a GJO,” Scarpelli related over the telephone.

“Great,” I replied, “a grand jury original so no cop will ever show up to work on it.” Let the shit parade begin, I silently thought to myself.

“No, it’s Kauffman’s case and he’s eager to work it. It involves a missing woman whose body has never been found.”

I perked up at the mention of no body having been found. I knew our office had not done many, if any, of these prosecutions. “Come on by and we’ll talk,” I told him, hoping my status as a former supervisor might cause him to be wary of dumping a complete barker in my lap. Within minutes Scarpelli was sitting in the government-issued and probably prisoner-built chair next to me telling the story of Marion Fye.

Marion Fye was 39 years old when she went missing nearly one year earlier, in late November of 2003. No one had seen or heard of her since then. She had five children but was supposedly also a drug addict and alcoholic, so the police were initially not too eager to spend much time looking for her. Moreover, her family, which included several sisters and a brother, had told the police a seemingly fanciful story that several of Fye’s children had been in the house when Fye’s boyfriend had shot her. None of them had seen the boyfriend, nicknamed Devine, actually shoot her but had allegedly heard the shot. Unfortunately when Scarpelli and Kauffman had spoken to the children they had denied hearing anything or that Devine had killed her.

“Sounds like an interesting case,” I told Scarpelli.

“Yeah, it is. I’d like to stay on the case and help out if possible,” he replied.

“Sure,” I accepted, knowing that if the case did involve forensics, Scarpelli’s experience with DNA honed from numerous rape cases he had prosecuted could come in handy.

I accepted the single box of documents and immediately began to read it as Scarpelli departed. The more I read, the more convinced I became that not only was Fye dead but that her boyfriend, Devine, had killed her. Knowing it and proving it, however, are two different things.

As I read through the file, I was also struck by how little information there was about the victim in the case. There was overwhelming evidence that she was missing and probably dead but not much beyond that. Although she was not working now, where had she worked? What was she like? What did she like to do, what was her relationship with the three different fathers of her children? Marion Fye was a puzzle to me as I read dry reports of interviews and crime scene examinations. This was hardly uncommon in a homicide case. There is often so much focus on the defendant and who the witnesses are, what they have said, and how they will testify on the stand, that the victim becomes almost an uninvited guest to a party. "Oh, what are you doing here?" In the morbid humor of cops and prosecutors everywhere, the victim becomes "Dead Guy," a catchall phrase that covers all victims in all cases.

About a year before the Fye murder, I had tried a murder case with another prosecutor. I was a late addition to the case and had just finished trying another case. One morning we were in court preparing to pick a jury. The judge was asking us questions about the case so he could relate the essential facts of the case to the jury before jury selection began. Outside the presence of the jury he asked me the name of the victim. I froze because I realized I could not recall the victim's name. Either realizing that I had forgotten or simply being helpful, my colleague piped in with the name, thus sparing me the embarrassment of having to admit to the judge that I did not even know my victim's name. To this day I can recall the name of every defendant I have ever prosecuted for murder, but I could probably come up with only about half of the victims' names.

In this case, however, I knew I was going to have to know a lot more about Marion Fye than I typically did about a victim. If we were going to prove she was dead, we needed to show what she was like when she was living. Ironically, in the one case where the victim was gone, it was going to be critical not to forget her

